

Appl. No. 09/755,320

Amdt. dated: May 11, 2005

Reply to Final Office Action of June 16, 2004 and Advisory Actions of October 7, 2004, February 16, 2004, and April 21, 2005

REMARKS

Claims 1-31 are in the application. Claims 1-2, 6, 8-11, 13-16, 18-20, 22-27, and 30-31 are allowed. Claims 7, 12, 17, 28, and 29 are rejected, and claims 3-5 and 21 are objected to. By the present amendment, claims 2, 3, 4, 5, 21, and 28 are amended. The amendments add no new matter. In view of the amendments and following remarks, reconsideration of claims 1-31 is respectfully requested.

Surrender of Patent

Applicants have been unable to find the original patent. A statement as to the loss of or inaccessibility to the original patent is attached hereto. Applicants submit that this document satisfies the requirement regarding the surrender of the original patent.

§ 112 Rejections

Claim 7 is rejected under 35 USC § 112, as being indefinite, for reciting the term "mol". Claims 12, 17, and 29 were also rejected as being indefinite for depending from an indefinite claim. In accordance with the Examiner's suggestion, claim 7 is amended to replace the term "mol" with the term "molecule". Applicants submit that this amendment obviates the rejection.

Claim 28 remains rejected under 35 USC § 112, first paragraph, "as failing to comply the written description requirement". Applicants have amended claim 28 for clarity to recite a DNA molecule of claim 1, comprising a nucleotide sequence having a region which consists of nucleotides 749 to 931 of SEQ ID NO. 1. Applicants submit that the amendment overcomes the rejection. For the Examiner's convenience, a marked-up version of the amendments to new claim 28 is attached hereto.

Claim Objections

Claims 3-5 and 21 are objected to for reciting "Sequence Identifier No.", rather than "SEQ ID NO:". Applicants have amended claims 3-5 and 21, as well as claim 2, to correct the format. Applicants submit that the amendments overcome the objection

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Oath/Declaration

Applicants are submitting herewith a copy of the Supplemental Declaration for Reissue Patent Application To Correct "Errors" Statement that was sent to the Patent Office on March 21, 2005, with the last non-entered amendment. The Supplemental Declaration was signed by Joseph Jankowski the Assistant Vice President-Biomedical Science of the Assignee, Case Western Reserve University on March 16, 2005, after he reviewed the current substantive amendments to the claims. Since the current changes to the claims have been made simply to correct formalities (e.g., underlining claims 28-31, and changing their status identifier), Applicants submit that the Jankowski Declaration, dated March 16, 2005, satisfies the requirement under 37 CFR 1.175.

Telephone Conference of December 14, 2004

On December 14, 2004, Examiner Saoud informed the undersigned that the previous amendment would not be entered, and that claim 6 would not be allowed unless the term "isolated" was added to the claim. As suggested by the Examiner, applicants have now amended claim 6 to indicate that the RNA transcript is isolated.

In the telephone conference of December 14, 2004, Examiner Saoud also asked the applicant if the clones recited in claim 27 had been deposited. As shown in the attached copy of the Declaration of Dr. Gorski which was filed during prosecution of the application on which the present reissue application is based, the clones were deposited with the American Type Culture Collection on November 24, 1997 and assigned accession number ATCC 209497.

In view of the amendments and remarks, Applicants submit that claims 1-31 are now in condition for allowance. Prompt notification of such allowance is respectfully requested. If the Examiner feels that further changes to the application are necessary or if she has any questions regarding the amendments or documents that will be provided to the Patent Office, she is invited to contact the Pamela Docherty at (217) 622-8416.

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Applicants also request that any further communications regarding this application be sent to the attention of Ms. Pamela Docherty at the address associated with Customer number 24024.

Respectfully submitted,

Date: May 11, 2005

By: Pamela Docherty

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28. (Currently amended) The isolated DNA molecule of claim 1, [wherein said DNA molecule comprises a homeobox, said homeobox] comprising a nucleotide sequence having a region which consists of nucleotide 749 to nucleotide 931 of SEQ ID NO:1.